

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11597 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgement?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KASUBEN WD/O VALJIBHAI

HEMABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

Special Civil Application No. 11597 of 2000

MS NIRALI B MUNSHI for Petitioner No. 1

Mr.H.R.Sompura, Assistant GOVERNMENT PLEADER,
for Respondent No. 1

MR HS MUNSHAW for Respondent No. 2

NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/08/2001

ORAL JUDGEMENT

1. By order dated 26th April, 2001, this Court
(Coram : M.S. Shah, J.) passed the following order :-

"

Affidavit-in-reply, if any, shall be filed latest by 20.6.2001. The petition shall be listed for final disposal on 10.7.2001.

... .."

Since then, the petition is pending before this Court. Therefore, now the matter is required to be disposed of finally. Hence, Rule returnable today. Mr.H.R. Sompura, AGP, waives service of Rule on behalf of respondent No.1 and Mr.Munshaw waives service of Rule on behalf of respondent No.2. With the consent of the parties, the matter is taken up for final hearing today.

2. The husband of the petitioner was serving as Talati-cum-Mantri and he died on 9.8.1997 while he was in service. The petitioner, being the widow of said deceased employee, approached this Court for getting pensionary benefits as the Department has not given the said benefits to the petitioner.

It seems that the husband of the petitioner was placed under suspension in the month of January, 1991. However, by order dated 6.9.1996, he was reinstated in service. The said reinstatement order is placed on record at page 24, Annexure 'C' and subsequently, he resumed his duty also on the said post and, unfortunately, he died on 9.8.1997. It seems that the petitioner was subjected to criminal proceedings under Section 409 of the Indian Penal Code and ultimately, the Police released the petitioner's husband under Section 169 of the Code of Criminal Procedure, stating that there is no case against him and, ultimately, by order dated 14th March, 1996, he was acquitted by the Magistrate. The said acquittal order is at page 23. It appears that because of the said acquittal order, the petitioner was reinstated in service. However, in spite of the fact that considerable time has passed, the widow of the said employee, i.e. the present petitioner, has not received any pensionary benefit at all and she made representation from time to time and even the suspension period of the deceased was not regularized by the Department. It appears that before any decision was taken in the disciplinary proceedings, the husband of the petitioner died and, therefore, it is an admitted fact that no order adverse to the aforesaid employee was passed by the Department.

3. Mr. Munshaw, learned Advocate appearing for the respondent No.2-D.D.O., however, pointed out that the departmental proceedings were initiated against the employee and report was also submitted by the Enquiry Officer to the Disciplinary Authority, but since, in the meanwhile, the petitioner died, no order was passed against the deceased employee. However, there is no dispute between the parties on the factual aspect to the effect that even at the time of submitting the enquiry report by the Enquiry Officer, the petitioner was already dead since he died on 9th August, 1997 and Enquiry Officer submitted report on 21st August, 1997. So far as this factual aspect is concerned, there is no serious dispute. In view of the aforesaid aspect, it is clear that at the time of the death of the aforesaid employee, there was no final order of punishment, which can be said to have been passed against him. In my view, therefore, under the aforesaid circumstances, since the deceased employee was not subjected to any order of penalty, naturally, the petitioner, being the wife of the deceased employee, is entitled to all pensionary benefits and all other retiral dues, including difference in the amount of subsistence allowance, which are not yet paid to her.

4. It is required to be noted that the State Government has also passed Resolution dated 8th November, 2000, wherein it is stated that if an employee dies before the conclusion of the departmental proceedings or the conclusion of criminal proceedings, then his services are required to be counted for all purposes and whatever benefits are required to be given to the family of the deceased employee, such benefits, such as pension, gratuity, etc., are required to be given and the period of suspension is also required to be treated as on duty.

5. The learned Assistant Government Pleader as well as Mr. Munshaw, appearing for both the State and the D.D.O. state that the aforesaid Resolution is of 8th November, 2000, whereas the petitioner died on 9th August, 1997 and at that time, such G.R. was not there. In my view, however, looking to the fact that at the time of the death of the husband of the petitioner, since no final order was passed by the Department, even otherwise, the Government is bound to pay all pensionary benefits and other benefits to the family members of the deceased employee. There is, therefore, no reason to deny pensionary benefits to the petitioner. I also do not think it fit to remand the matter to the State Government for reconsideration since it will delay the proceedings and the widow is deprived of pension since 1997.

6. Mr.Munshi, learned Advocate for the petitioner, has also relied upon the decision of the Mumbai High Court in Hirabhai Deshmukh and another v. State of Maharashtra and others, 1986 LAB I.C. 248. A Division Bench of the Mumbai High Court has held that if the Government servant has died before the conclusion of disciplinary proceedings, the proceedings would terminate and abate and the period between the date of suspension and date of death to be treated as service for all purposes.

7. In view of the aforesaid aspect of the matter and especially looking to the fact that since no final order was passed against the deceased employee, the present petitioner is entitled to all the benefits, including the benefit of pension. In that view of the matter, therefore, the petition is required to be allowed. The respondents are directed to immediately finalise the pension case of the petitioner's husband and fix the family pension which is required to be paid to the petitioner in view of the death of her husband. The pension case of the petitioner, therefore, should be finalised on or before 31st October, 2001 and whatever amount is required to be paid to the petitioner towards family pension as well as other retirement dues, including the arrears of salary which are required to be paid for the period during which the husband of the petitioner was under suspension, should be paid on or before 31st December, 2001. The respondents may not delay the aforesaid matter any further in view of the fact that since 1997, the petitioner is deprived of getting her legitimate dues and considerable time has passed after the death of her husband.

Rule is accordingly made absolute with no order as to costs.

16th August, 2001 (P.B. Majmudar, J.)

(apj)